IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11828 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAY SAURASHTRA TALKIES - Petitioner(s)

Versus

SURESHBHAI LABHSHANKAR RAWAL - Respondent(s)

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Appearance :

MR DG CHAUHAN for Petitioner No(s).: 1.

MR SATYEN B RAWAL for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 18/08/2005

ORAL JUDGMENT

1.Rule. Shri Satyen B. Rawal, learned advocate, waives service of rule on behalf of respondent.

2.With the consent of the parties the matter is taken up

for final hearing.

3. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the ex-parte judgment and award dated 25.8.2003 passed by the Labour Court, Surendranagar, passed in Reference (LCS) No.10/1996 and also the order dated 24.1.2005 passed by the Labour Court, Surendranagar, passed in Misc. Application No.48/2003.

4. It appears from the record that respondent has raised industrial dispute challenging his oral termination w.e.f. 28.10.1995 and the said dispute was referred to Labour Court, Surendranagar for its adjudication being Reference (LCS) No.10/1996. It appears from the record that nobody remained present on behalf of the petitioner and therefore, the Labour Court, Surendrangar, passed an ex-parte judgment and award in partly allowing the said Reference and quashed and set aside the action of the petitioner in terminating his service w.e.f. 28.10.1995. However, in view of the fact that the petitioner Talkies was closed, did not pass any order with regard to reinstatement and directed to pay the backwages from the date of termination i.e 28.10.1995 till the closure. It is the case of the

petitioner that as soon as they came to know about the ex-parte judgment and award, they preferred Misc. Application No.48/2003 under Rule-26(A) of the Industrial Disputes (Gujarat) Rules for setting aside an ex-parte judgment and award and the said application was within the period of limitation. It was contended on behalf of the petitioner that they have engaged an advocate but he did not inform the petitioner to remain present and therefore, nobody would remain present on behalf of the petitioner. The Labour Court, Surendranagar, held that as the notices were served upon the petitioner and that they have engaged advocate, nobody remained present and no sufficient cause is shown and therefore, dismissed the said application vide order dated 24.1.2005. Being aggrieved and dissatisfied with the order passed by the Labour Court, Surendranagar dated 24.1.2005 passed in Misc. Application No.48/2003 in dismissing the same, the petitioner has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

5.Shri D.G.Chauhan, learned advocate, appearing on behalf of the petitioner has submitted that learned advocate who was engaged to defend the proceedings by the

petitioner did not participate in the proceedings and the matter proceeded ex-parte and the Labour Court ought to have set aside the ex-parte judgment and award on payment of certain costs and the said aspect has not been considered by the Labour Court and therefore, it is requested to allow the present Special Civil Application. It is also submitted that the petitioner has maritorious case.

6. On the other hand, Shri Satyan B. Rawal, learned advocate, appearing on behalf of the respondent workman has opposed the present Special Civil Application and submitted that in view of the fact that though served, nobody remained present on behalf of the petitioner and therefore, the Labour Court was justified in proceeding further with the Reference ex-parte and the Labour Court has rightly rejected the application for setting aside ex-parte judgment and award. He has further submitted that even in absence of the petitioner, the Labour Court has striked the balance by refusing the reinstatement as the petitioner Talkies was already closed. It is also further submitted by him that in view of the fact that no sufficient cause was shown, the Labour Court has rightly rejected the application under Rule -26(A) of the Industrial Dispute (Gujarat)

Rule and therefore, it is requested to dismiss the present Special Civil Application.

7. It is not in dispute that the petitioner management did engage an Advocate, however, it appears that the learned advocate who was engaged to defend the proceedings by the petitioner, did not participate in the proceedings and the matter proceeded ex-parte. The Labour Court found that if the advocate of the petitioner did not properly defend the proceedings and nobody remained present on behalf of the petitioner, the same cannot be ground for getting the information with regard to the proceedings and the Labour Court has found that the contention that the petitioner has no information cannot be accepted and the Labour Court found that there is no sufficient cause made out, hence, the application for restoration was rejected. It appears that the Labour Court has not considered the aspect as to whether the default caused in not properly defending proceedings can be compensated by awarding suitable costs to the other side or not. Moreover, the Labour Court has also not considered default caused by the advocate. As far as possible, the Court may see that the litigant is not made to suffer unless irreversible situation has arisen on account of the

lapse or default on the part of the lawyer. This Court in its judgment and order dated. 3.11.2003 passed in Special Civil Application No.6873/2003 as well as in its another judgment and order dated 26.4.2004 passed in Special Civil Application No.5144/2004 has taken a view that while considering the matter for setting aside the ex-parte order, the Court should consider the aspect as to whether the default is such, which cannot be compensated in terms of money by awarding suitable costs or not.

8. Considering the facts and circumstances and keeping in view the aforesaid decisions, in my opinion the Labour Court could have considered the said aspect on awarding appropriate cost by way of compensation for default caused for not properly defending before the Labour Court. Under the circumstances and considering the aforesaid decisions of this Court, according to me, while quashing and setting aside ex-parte judgment and award if the respondent workman is compensated by way of costs, which is quantified at Rs.7500/- the same will meet the ends of justice.

9. For the reasons stated above, the petition succeeds. The order passed by the Labour Court, Surendranagar,

dated 24.1.2005 passed in Misc. Application No.48/2003 in dismissing the restoration application is hereby quashed and set aside. The ex-parte judgment and award dated 25.8.2003 passed by the Labour Court, Surendranagar, passed in Reference (LCS) No.10/1996 is also hereby quashed and set aside and the matter is remanded to the Labour Court for deciding Reference (LCS) No.10/1996 in accordance with law and on merits afresh within a period of 6 months from the date of receipt of this order. Petitioner is directed to pay an amount of Rs.7500/- in all towards the costs for quashing and setting aside the ex-parte judgment and award as well as the costs of the present proceedings. Petitioner has already deposited an amount of Rs.5000/- pursuant to the order passed by this Court dated 21.6.2005 and the respondent workman is permitted to withdraw the same and offfice is directed to issue an Account Payee Cheque for an amount of Rs.5000/- in favour of the respondent workman as early as possible. The balance amount of Rs.2500/- be paid by the petitioner to the respondent workman by Account Payee Cheque within a period of 4 weeks from today.

10.Rule is made absolute to the aforesaid extent.

(M.R.SHAH, J.)

kdc.